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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND FARMER BROS. CO., a corporation, the real party in interest,

Petitioners,

vs.

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

Respondents.

ANSWER TO MOTION TO DISMISS WRIT OF CERTIORARI.

To the Honorable Fred Vinson, Chief Justice of the Supreme Court of the United States and to the Honorable Associate Justices:

Come now the petitioners, The Superior Court of the State of California in and for the County of Los Angeles, and Farmer Bros. Co., a corporation, the real party in interest, petitioners, and for Answer to the Motion to Dismiss the Writ of Certiorari filed herein by the respondents, respectfully set forth:-

I.

The respondents were convicted of contempt of Court after trial and sentenced to jail and to pay fines. Their conduct was a serious and contemptuous affront to the Court and the orderly process thereof. The people of the State of California are interested and through the Superior Court of the State of California in and for the County of Los Angeles sought to enforce the Order of its Court and to punish for a disobedience of its order. The Supreme Court of the State of California did not deny the authority of the Superior Court to enforce the punishment imposed by that Court if the statute involved be held valid. Its determination turned upon the unconstitutionality of the statute involved under the First and Fourteenth Amendments, hence this issue is now squarely before this Court. No issue was raised in the Courts below, nor was that issue passed upon—as to the dismissal by Farmer Bros. Co.—*nor was it raised in opposition to the Petition for Certiorari* (emphasis ours); hence it is not properly before this Court, nor the reasons therefor—the respondents did not seek to amplify the record—we brought to this Court the complete record before the Supreme Court of California. The sole issues are the constitutionality or unconstitutionality of the California statute forbidding combinations to bring about the secondary boycott or the so-called hot cargo. The Taft-Hartley Law upholds the secondary boycott and must necessarily govern the construction of State statutes containing in effect similar provisions—secondly the injunction surely was good because

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it forbade combinations and agreements to compel an unlawful act.

II.

The case is not now moot regardless of the filing by Farmer Bros. Co. of a dismissal of the Complaint in the Superior Court of the State of California in and for the County of Los Angeles. At the time of the trial the injunction was in force—it has never been dissolved by motion or order of Court. The dual function of contempt has long been recognized: (1) vindication of the public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires of him. Both the Superior Court and Farmer Bros. Co. in this proceeding seek obedience to Orders of the Court.

III.

The injunction granted was never dissolved and due process does require under the circumstances of this case that the judgment of the California Supreme Court reversing the convictions of respondents upon the authority of *In re Blaney*, 30 A. C. 648, and upon constitutional grounds, be reviewed by this Court and considered upon the merits.

ARGUMENT.

The record filed with this Court on the Petition for Writ of Certiorari was complete and included the entire record before the Supreme Court of the State of California. It is significant that when the Petition for Certiorari was filed no effort was made by the respondents herein in any respect to augment the record, and while it is true that we accommodated counsel by stipulating as to the fact that the action had been dismissed, we do not feel that that is properly a part of the record before this Court injected at this late date, neither would the reasons therefor be material.

The contempt proceeding was a separate, distinct proceeding brought about by the filing of affidavits and a complaint seeking to have the respondents adjudged in contempt. A citation was issued by the Court and thereafter demurrers were filed by the Respondents asserting that they were being deprived of constitutional rights guaranteed to them under both the First and Fourteenth Amendments to the Constitution. [R. 107, 118.] The demurrers were overruled, issues were joined and a trial ensued. The record shows that the respondents even failed to take the stand and deny the accusations or to explain them in the slightest degree. The opinion of Judge Stephens who tried the case, establishes beyond doubt the utter contempt held by these respondents for the Court and its Orders. [R. 169.]

The injunction issued has never been dissolved either by motion or by order of Court and under the long-recognized rule with reference to the function of contempt, it has been repeatedly said that the purposes thereof are (1) vindication of the public interest by punishment of the con-

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temptuous conduct, (2) coercion to compel the contemnor to do what the law requires of him. The respondents sought to reverse the conviction of contempt with resulting penalties of both fine and imprisonment by contesting the constitutionality of the law, urging it was in violation of both the First and Fourteenth Amendments. A substantial federal question is squarely before this Court. Both the courts and litigants have a right to expect that orders of Court will be obeyed and an order issued by a Court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceeding, even though the statute under which the order is issued is unconstitutional.

Violations of a Court order are punishable as contempt even though the order is set aside on appeal as in excess of the Court's jurisdiction, or even though the basic question has become moot.

Authorities.

Penfield Co. v. Securities & Exchange Com., 330 U. S. 585, 592, where it was said:

> "The dual function of contempt has long been recognized (1) vindication of the public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires of him. *Gompers v. Bucks Stove & Range Co., supra* (221 U. S. pp. 441 *et seq.*, 55 L. Ed. 805, 31 S. Ct. 492, 34 LRANS 874); *United States v. United Mine Workers, supra*, 330 U. S. p. 302, *ante*, 917, 67 S. Ct. 677. As stated in *Bessette v. W. B. Conkey Co.*, 194 U. S. 324, 327, 48 L. Ed. 997, 1001, 24 S. Ct. 665, The purpose of contempt proceedings is to uphold the power of the court and also to secure to suitors therein the rights by it awarded."

In the case of *United States v. United Mine Workers of America,* 330 U. S. 258, 293, the Court held:

"In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

"Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and both the language of the Act and its legislative history indicated the substantial nature of the problem with which the District Court was faced.

"Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat v. Kansas,* 258 U. S. 181, 189, 190, 86 L. Ed. 550, 559, 42 S. Ct. 277 (1922) this Court said:

"'An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity

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of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.'

"Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden v. Searls,* 121 U. S. 14, 30 L. Ed. 853, 7 S. Ct. 814 (1887), or though the basic action has become moot, *Gompers v. Bucks Stove & Range Co.,* 221 U. S. 418, 55 L. Ed. 797, 31 S. Ct. 492, 34 LRA (NS) 874 (1911).

"We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the Court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt."

With reference to the propriety of review of State contempt proceedings by this Court, see *Bridges v. California,* 314 U. S. 252.

The *Labor Management Relations Act of 1947*—Public Law 101, 80th Congress, First Session—Taft-Hartley Act, condemns the secondary boycott and represents the federal policy as to the regulation and restriction of such secondary boycott (see Section 303 of such Act).

We think the authorities above cited completely answer the Motion to Dismiss heretofore filed by the respondents as to whether or not a substantial federal question was

raised, and as to whether or not contempt may proceed even though the basic action has become moot.

Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 55 L. Ed. 797.

We therefore respectfully pray that this Court deny the Motion to Dismiss and proceed to determine this all-important question of the constitutionality of the State statute involving the secondary boycott and hot cargo upon the merits.

Respectfully submitted,

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